Trust and Deposit Co. v. *Fisher,* 200 U. S. 57; 3 MICH. L. REV. 442; 4 MICH. L. REV. 540; 5 MICH. L. REV. 362. Although these cases give the consumer a right of action for failure of the supply against the water company, as a beneficiary of the contract with the municipality, or under a general duty to the public undertaken by the water company it is settled that a purchaser of the water can not bring an action based on the negligent interference with the water company's water rights. This follows from the rule that there is no right of action where the duty of another person to exercise care intervened between the neglect of the defendant and the injury to the plaintiff. There is ample authority to the effect that a city or water company authorized by statute to take water from a stream for municipal uses may maintain an action or bill for interference with the supply by upstream owners who have not previously acquired the right of interference by prescription. *City of Baltimore* v. *Warren Mfg. Co.,* 59 Md. 96; *City of Springfield* v. *Fullmer,* 7 Utah 450, 27 Pac. 577; *Sprague* v. *Door,* 185 Mass. 10; *Martin* v. *Gleason,* 139 Mass. 183; *Indianapolis Water Co.* v. *American Strawboard Co.,* 53 Fed. 970. In reference to the right to divert waters to non-riparian lands unaided by statute see 12 MICH. L. REV. 304.

WILLS—AWKWARDLY WORDED CODICIL CONSTRUED.—Under the original will the absolute title to the property would go to the testator's wife. Testator, by codicil, provided that all his property standing in his name should go to his son, except certain property which came to him through his wife, which was to go to his wife's estate. Another provision added "this codicil shall only be deemed valid in event that my wife * * * should die before my said wife makes a will after my death, otherwise it is to be treated as nugatory and as non-existent." Said wife died before testator. *Held,* valid, and son takes such property. *In re Werlich's Will,* (1920) 179 N. Y. S. 692.

Upon first reading this codicil it seems that it should become valid only upon one contingency,—namely, if the testator's wife dies, without making a will, *after his death.* So, at first glance, it appears the court is going directly contrary to the express words of the codicil, in holding it is valid if the wife dies before the testator. It must be admitted that the codicil was very awkwardly constructed, and that the testator's meaning was beclouded. The case is interesting in showing how far the courts will go to carry out the real intention of the testator, even to the extent of ignoring certain phrases and provisions. In effect, this court totally ignored the phrase, *"after my death,"* as much as if it had been omitted by the testator. Upon consideration of the whole will and the codicil combined, the testator's intention clearly appears to have been that the property should pass to his son, as he provided by his codicil, unless his wife made some other testamentary disposition of it *after his death.* His wife having preceded him in death, the codicil became effective according to the testator's intention, and the property passes to his son. The court is not bound to a literal and strict interpretation of the words used. *McMurtrie* v. *McMurtrie,* 15 N. J. L. 276. Where the intention of the testator is manifest from the whole will and surrounding circumstances, but

the words and modes of expression are ambiguous, the intention controls the language used. *Phillips* v. *Davies,* 92 N. Y. 199; *Blair* v. *Blair,* 82 Kan. 464.

WILLS—DEED IN FORM RESERVING OPERATION UNTIL DEATH OF GRANTOR. —The appellant executed an instrument in the form of a warranty deed, to his son, in consideration of his verbal promise that he would care for and support the appellants. The instrument was headed "Warranty Deed" and was referred to in the body of the instrument as a "deed," and in the acknowledgement as a "deed" conveying land to the grantee. But in the habendum clause it was provided "that the deed is inoperative prior to the death of" the appellants. This suit is in equity to cancel the instrument, the contention of the appellants being that it is a will and not a deed, and therefore revocable. *Held,* that this instrument was not a will, but a deed, the title to the land passing through the operation of the granting clause, but the possession was reserved to the grantors (the appellants) during their lives. Bill dismissed. *Sutton et al.* v. *Sutton,* (Ark., 1919) 216 S. W. 1052.

Between a deed and a will the following fundamental distinctions are to be noted: under the former, normally, a present interest passes, under the latter no interest passes until the death of the testator. The former is a completed legal act, beyond the power of the grantor to undo, the latter is ambulatory. 17 MICH. L. REV. 413. In determining whether an instrument is a deed or a will the manifest intention of the party making it, as gathered from all the language used in the writing, is controlling. *Jones* v. *Caird,* 153 Wis. 384; *Sharp* v. *Hall,* 86 Ala. 110; *Phillips* v. *Thomas Lumber Co.,* 94 Ky. 445; *Bassett* v. *Budlong,* 77 Mich. 338; *Wall et al.* v. *Wall,* 30 Miss. 91. Moreover the courts will, where they can reasonably do so, construe an instrument so as to give it effect, and reject a construction which would deprive it of any effect. *Hunt* v. *Hunt,* 119 Ky. 39; *Jones* v. *Caird, supra; Love* v. *Blauw,* 61 Kan. 496; *Wilson* v. *Carrico,* 140 Ind. 533. As would be expected from the indefinite nature of the above methods of construction, the authorities are in conflict as to the effect of clauses reserving the operation of such an instrument,—as in the principal case,—until the death of the maker. Some cases have held such instruments to be testamentary in character and to be revocable even though delivered and in some recorded. *Turner* v. *Scott,* 51 Pa. St. 126; *Bigley* v. *Souvey,* 45 Mich. 370; *Hazelton* v. *Reed,* 46 Kan. 73; *Murphy* v. *Gabbert,* 166 Mo. 596; *Carlton* v. *Cameron,* 54 Tex. 72. On the other hand many cases have held, as did the court in the principal case, that a present interest in the land passed immediately through the operation of the granting clause, but the possession and enjoyment were reserved to the grantors by the reservation clause. *Wilson* v. *Carrico, supra; Prentico* v. *Hays,* 75 Kan. 76; *Hunt* v. *Hunt, supra.* In still another case while they held such an instrument a deed, and not a will, the court said that it operated to create an estate *in futuro. Abbott* v. *Holway, 72* Me. 298. And this conflict is still to be found among the later cases, some holding that such instruments are wills, *Thomas* v. *Byrd,* 112 Miss. 692; *Cox.* v. *Reed,* 113 Miss.